

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

January 8, 2010

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Hawaii

After-the-Fact Consent to Sublease under General Lease No. S-4283, Kapalama Commercial Center, Lessor, to Foreign Auto Repair aka Raul Alvarenga dba Foreign Auto Repair, as Sublessee; After-the-Fact Consent to Sublease under General Lease No. S-4283, Kapalama Commercial Center, Lessor, to WESCO aka WESCO Distribution, Inc., a Delaware corporation, as Sublessee; Consent to Extension of Lease Term, General Lease No. S-4283, Kapalama Commercial Center, Lessee, Lot 13, Hilo Industrial Development, Pohaku Street Section, Waiakea, South Hilo, Hawaii, Tax Map Key: (3) 2-2-58:25.

APPLICANT:

Kapalama Commercial Center, Inc.

REQUESTS:

1) Request for After-the-Fact Consent to Subleases:

Kapalama Commercial Center, Inc., a Hawaii corporation, as Sublessor, to (i) Foreign Auto Repair aka Raul Alvarenga dba Foreign Auto Repair (Alvarenga), as Sublessee, and (ii) WESCO aka WESCO Distribution, Inc., a Delaware corporation (WESCO), as Sublessee.

2) Request for Lease Extension:

Improvements financed by the Lessee, Kapalama Commercial Center, Inc., pursuant to Hawaii Revised Statutes, Section 171-36(b), in the amount of \$36,624.77. In order for Lessee to amortize these expenditures, the Lessee is requesting an extension of General Lease No. S-4283 of 15 years, commencing on January 20, 2010 and expiring on January 19, 2025 for an aggregate term (initial term plus all extensions) of 55 years.

LEGAL REFERENCE:

Sections 171-36(a)(6) and -36(b), Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Waiakea situated at Lot 13, Hilo Industrial Development, Pohaku Street Section, Waiakea, South Hilo, Hawaii, identified by Tax Map Key: (3) 2-2-58:25, as shown on the attached map labeled Exhibit A.

AREA:

19,106 square feet, more or less.

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CHARACTER OF USE:

Industrial purposes.

SUBLEASE CHARACTER OF USE:

- 1) Alvarenga – currently used for automotive repair
- 2) WESCO – currently used for wholesale electrical products storage

TERM OF LEASE:

Original term of 40 years, commencing on January 20, 1970 and expiring on January 19, 2010.

Requested extension of 15 years commencing on January 20, 2010 and expiring on January 19, 2025.

TERMS OF SUBLEASES:

- 1) Alvarenga – Initial term was one year from January 1, 2005 to December 31, 2005. From January 1, 2006 to the present, the sublease has been on a month-to-month basis.
- 2) WESCO – Initial term was one year from January 1, 2005 to December 31, 2005.

From January 1, 2006 to the present, the sublease has been on a month-to-month basis.

ANNUAL LEASE RENTAL:

Current rent is \$10,500, due in quarterly installments of \$2,625 on 20th of January, April, July and October of each year.

ANNUAL SUBLEASE RENTAL:

- 1) Alvarenga – \$16,875 (\$1,406.25 per month)
- 2) WESCO – \$14,062.44 (\$1,171.87 per month)

RECOMMENDED ADJUSTMENT TO LEASE RENTAL:

None as the subject subleases are for improved property only and the improvements are not owned by the State and the Lessee pays fair market rent.

DCCA VERIFICATION:

SUBLESSOR:

Place of business registration confirmed:	YES <u>X</u>	NO <u> </u>
Registered business name confirmed:	YES <u>X</u>	NO <u> </u>
Good standing confirmed:	YES <u>X</u>	NO <u> </u>

SUBLESSEE – WESCO Distribution, Inc.:

Place of business registration confirmed:	YES <u>X</u>	NO <u> </u>
Registered business name confirmed:	YES <u>X</u>	NO <u> </u>
Good standing confirmed:	YES <u>X</u>	NO <u> </u>

Sublessee Alvarenga is a sole proprietorship and is not required to register with the DCCA.

RENTAL REOPENINGS:

Reopenings in the original term were at the end of the 20th and 30th years of the term, or on January 20, 1990 and January 20, 2000. The last rental reopening occurred on January 20, 2000.

Reopenings for the extended term shall be on January 8, 2010 and January 20, 2020.

SELF-FINANCED IMPROVEMENTS:

Lessee has accepted a proposal from a licensed contractor in the amount of \$36,624.77

for the following work:

- Repaint exterior of warehouse, including treatment of rust spots
- Repair/replace roll-up doors
- Parking lot striping
- Landscaping

See Exhibit B attached.

Staff has reviewed the details of KCCI's proposed repairs and improvements as well as other documentation submitted by KCCI in support of its request for a lease extension, including tax returns for the last three years, and also conducted a site inspection of the premises. The planned repairs and improvements under Exhibit B relate to the lease premises.

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Pay for an appraisal for the immediate rental reopening; and
- 2) Complete its painting, roll-up door repair/replacement, parking lot striping and landscaping work in the amount of at least \$36,624.77 and submit to Land Division staff receipts verifying payment for the improvements by December 31, 2010.

REMARKS:

General Lease No. S-4283 was sold at public auction to Kapalama Commercial Center, Inc. (KCCI) as unimproved land on January 20, 1970. For reasons unknown, the lease document was prepared with the comma and abbreviation "Inc." omitted from KCCI's name, with the lessee being identified as "Kapalama Commercial Center". Staff verified through records of the Department of Commerce and Consumer Affairs that KCCI has been in existence since September 30, 1960. Additionally, the notary block for GL S-4283 clearly indicates that the persons who signed the lease on behalf of "Kapalama Commercial Center" signed as corporate officers. Accordingly, staff recommends below that the discrepancy in KCCI's name be corrected and that KCCI's full name be used in the lease extension document, if approved by the Board of Land and Natural Resources.

KCCI constructed a steel-framed warehouse on the premises in 1975 with an area of approximately 9,000 square feet. Since the completion of construction, KCCI has used all or part of the space in the warehouse for storage of items from an affiliated hotel operation.

Request for After-the-Fact Consent to Subleases

In the course of processing KCCI's request for extension, staff learned that KCCI has two unapproved sublessees on the premises: Alvarenga, whose workshop occupies 1,500 square feet of the building, and WESCO, an electrical supply wholesaler who occupies 1,500 square feet as storage space. Alvarenga has occupied his space since 2000, and WESCO has occupied its space since 2001. Prior to the request for lease extension, KCCI had not sought approval of these subleases. Both subleases are currently on a month-to-month basis.

Alvarenga may be vacating his space in KCCI's building by December 31, 2009. WESCO plans to continue renting storage space in the building from KCCI on a month-to-month basis. WESCO does not intend to make any improvements to its sublease area.

By memoranda dated December 10, 2009, Land Division's staff appraiser determined that because GL S-4283 does not detail any calculation of sublease rents for lessee-owned improvements, the State is not entitled to any sublease rent participation. Therefore, the staff appraiser recommended no participation in the subleases, and the Chairperson accepted this recommendation on December 14, 2009.

This consent is after-the-fact because of oversight on KCCI's part. Staff has advised KCCI personnel to review the lease terms so that they have a full understanding of the company's lease obligations.

Staff reports that within the last two years, only one notice of default has issued to KCCI under the lease. The default was for failure to post the required performance bond after the bond on file expired. KCCI timely cured the default after receipt of the notice. With the exception of the two unapproved subleases covered by this submittal, KCCI is in compliance with all lease terms and conditions.

Request for 15-year Lease Extension

KCCI seeks a 15-year extension of its lease under applicable law to amortize the cost of planned improvements to the property, including repainting the exterior of the building, replacing the roll-up doors, re-stripping the parking lot and adding landscaping, at a cost of \$36,624.77.

The subject parcel is located in an area served by aging and/or substandard infrastructure. The area also includes numerous other DLNR parcels currently encumbered by long term leases that are not scheduled to expire until 2025 and 2030. Upon expiration of these leases, redevelopment of the area may be necessary and appropriate, and staff believes a comprehensive long-range planning effort for the area should be undertaken. Such planning efforts would be facilitated by having all of the leases in the area expire at, or near, the same time. The requested 15-year extension, i.e., to January 19, 2025, would be

consistent with this objective. Staff also acknowledges KCCI's need to make the planned improvements to continue operations during these challenging economic times.

Staff has included an applicant requirement above and recommendation below that KCCI complete these repairs and improvements and submit receipts for expenditures to staff by December 31, 2010, or the consent to extension shall be subject to cancellation.

Staff additionally notes that KCCI has made substantial repairs or improvements to the premises in the course of the lease. For example, in 2001, KCCI replaced the roof and gutters of the building at a cost of \$41,260.10. The roofing contractor provided a 20-year warranty on materials. KCCI continues to depreciate this expense in its tax returns. Such improvements demonstrate KCCI's continuing efforts to maintain the building in good order and repair, although the present extension request is not based on these past improvements.

The leased premises have been used substantially for the purpose for which they were leased. There are no outstanding rental reopening issues.

No agency comments were solicited on the request because it involves sublease approvals and a lease extension, and not a new disposition.

RECOMMENDATION:

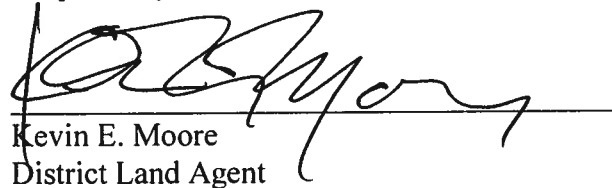
That the Board, subject to the Applicant fulfilling the Applicant requirement listed above:

1. Consent to the subleases under General Lease No. S-4283 between Kapalama Commercial Center, Inc., as Sublessor, and (i) Foreign Auto Repair aka Raul Alvarenga dba Foreign Auto Repair, as Sublessee, and (ii) WESCO aka WESCO Distribution, Inc., as Sublessee, subject to any applicable conditions cited above which are by this reference incorporated herein and further subject to the following terms and conditions:
 - A. The standard terms and conditions of the most current consent to sublease form, as may be amended from time to time;
 - B. Review and approval by the Department of the Attorney General; and
 - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
2. Authorize the extension of General Lease No. S-4283 under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. KCCI shall complete its painting, roll-up door repair/replacement, parking lot striping and landscaping work in the amount of at least \$36,624.77 and submit to Land Division staff receipts verifying payment for the improvements by December 31, 2010, or the lease extension shall be

subject to cancellation;

- B. Lessee's name in the lease extension instrument shall be corrected from Kapalama Commercial Center to Kapalama Commercial Center, Inc.;
- C. The standard terms and conditions of the most current lease extension form, as may be amended from time to time;
- D. Review and approval by the Department of the Attorney General; and
- E. Such other conditions as may be prescribed by the Chairperson which are in the best interests of the State.

Respectfully Submitted,



Kevin E. Moore
District Land Agent

APPROVED FOR SUBMITTAL:



Laura H. Thielen, Chairperson

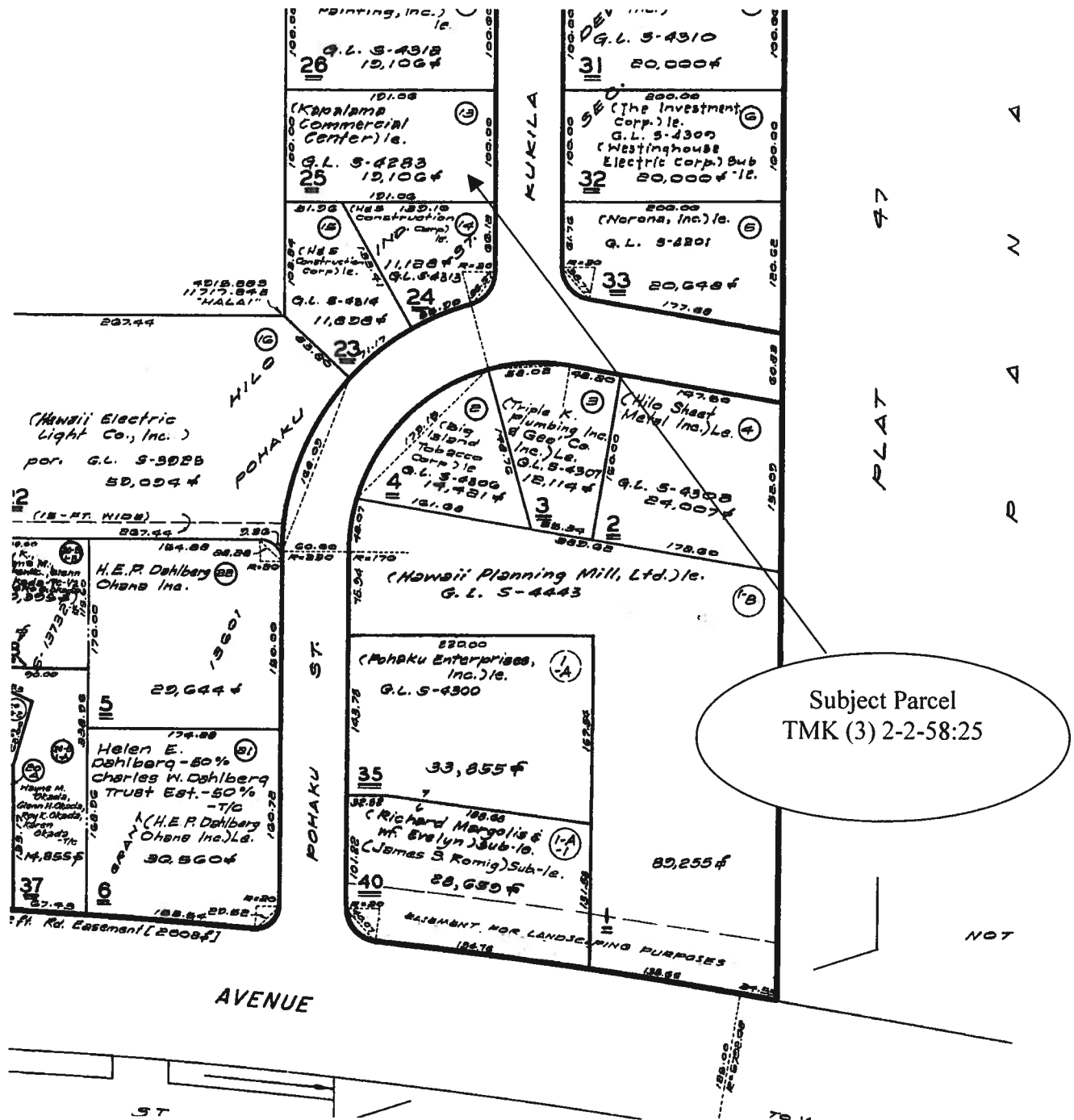


EXHIBIT A

Proposal
BERETANIA PROPERTIES, INC
87 Banyan Drive., Hilo, Hi. 96720
Phone (808) 961-6987 Fax (808) 959-6933
Contractors License No. BC-24774

Proposal Submitted To:

Name: Kapalama Commercial Center
Address: 87 Banyan Drive
City, State, Zip: Hilo, Hi. 96720
Attention: Sandy Yokomizo
Phone: 935-0861 Fax: 934-7519

Bid Date: 09/17/09 Date: 10/07/09

Job Name: Kukila Street Warehouse
Address: 15 Kukila Street
City, State, Zip: Hilo, Hi. 96720
Job No. Kukila Warehouse Improvements

We hereby submit our proposal for:

Repaint Exterior of Warehouse
Repair/Replace Roll Up Doors
Parking Lot Striping
Landscaping

Scope of Work: Labor & Materials Included, plus tax

High pressure wash all areas to be painted.
Scrape, sand, wirebrush all areas as needed.
Treat all rusted areas as needed.
Apply 1 coat primer to all areas.
Apply 2 coats finish paint to all areas.
Parking lot striping.
Replace 12'X14' Roll up sheet door;
Replace chain hoist & side bearings on all doors
Landscaping

Labor & Materials	\$35,160.00
Tax (4.166%)	1,464.77
Total	\$36,624.77

We hereby propose to furnish labor & materials complete in accordance with the above specifications, for the sum of: Dollars thirty six thousand six hundred twenty four and 77/100 \$ 36,624.77
Payments to be made as follows: Upon Agreement

All material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from above specifications involving extra costs, will be executed only upon written orders, and will become an extra charge over and above the estimate.

Authorized Signature: _____

Title: Secretary

Acceptance of Proposal

The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above. Should this account become delinquent, I understand that I am responsible for any and / or all legal fees, court costs and collection charges involved as a result of any collection activity.

Accepted: Date: 10/23/09

Signature: _____

EXHIBIT B